IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 12959 of 2003

Between:

V. Simhachalam, S/o. Late V. Ramaswamy, Occ: Secretary, Sathosapuram

Primary Agricutural Cooperative Society, Santhosapuram Post, Vizianagaram

District.

... PETITIONER

AND

1 The Government of Andhra Pradesh, Cooperation Department rep.by its

Secretary, Secretariat, Hyderabad.
2 The District Cooperative Officer, Vizianagaram, Vizianagaram District.
3 The Deputy Registrar of Cooperative Societies, Parvathipuram, Vizianagaram

District.

4 Santhosapuram Primary Agricultural Cooperative Society, Santhosapuram

Post, Vizianagaram District, rep.by its Chairman/Person-in-Charge.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in placing the petitioner under suspension continuously for more than 2 years with effect from 30.05.2001 till the date as illegal, arbitrary and violative of special bye laws issued by the Registrar under Rule-72 of the Cooperative Society Rules and violative of Article 14 and 21 of the Constitution of India. Consequently direct the respondents to reinstate the

petitioner with incidental benefits including continuity of service along with arrears of pay

Counsel for the Petitioner: MR.A.SATYA PRASAD

Counsel for the Respondents 1 to 3: GP FOR COOPERATION

Counsel for the Respondent No.4: SMT.M.BHASKARA LAKSHMI

The Court made the following order:

ORDER:

Petitioner is working as Secretary of the fourth respondent – primary agricultural cooperative society. His services have been suspended for misappropriation of funds of the society after an enquiry conducted under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964. Questioning the order of the society dated 30.05.2001 in placing him under suspension the present writ petition is filed stating that he said order is a violation of special bye laws issued by the Registrar of Cooperative Societies under Rule-72 of the Cooperative Society Rules.

It is stated that in the regular enquiry conducted against the petitioner by the fourth respondent society it was established vide proceedings RC.No.1420/99-C dated 19.02.2001 that petitioner misappropriated the assets of the fourth respondent society by joining hands with the Ex-President of the Society worth Rs.2,71,335/- by raising benami loan in the society. Petitioner also caused misappropriation of funds of the society by way of committing irregularities to Rs.10,989/-. Therefore, petitioner was placed under suspension in accordance with rules.

Against the surcharge proceedings made under Section 60 of the Act petitioner filed an appeal under Section 76(1) of the Act before the Andhra Pradesh Cooperative Tribunal, Vijayawada vide SR.No.2018 of 2002 and the matter is still pending.

Learned counsel for the respondents submits that in the enquiry conducted under Section 51 of the Act it was established that petitioner is responsible for issuance of benami loans

worth Rs.2,71,335/-. Therefore, a direction was issued under Section 59(1) of the Act to place the petitioner under suspension. As long as the surcharge proceedings are not set aside it is not possible to reinstate the petitioner.

I am of the opinion that keeping the petitioner under indefinite suspension is without justification and it would be against the interest of the society in paying subsistence allowance to the petitioner without completing the enquiry or removing him from services. Merely because an appeal is pending against the surcharge proceedings it cannot be said that the society cannot complete the disciplinary proceedings against the petitioner.

Having regard to the facts and circumstances of the case, the fourth respondent society is directed to initiate and complete the disciplinary proceedings against the petitioner for the alleged misappropriation of funds and take appropriate action within a period of three months from the date of receipt of a copy of this order and pending disciplinary proceedings, if not already passed any orders, the society shall take steps to pay the subsistence allowance payable to the petitioner in accordance with the special bye laws and rules.

The writ petition is accordingly disposed of. No costs.

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V. ESWARAIAH, J

November 4, 2004

Dsk

To

1 The Secretary, Cooperation Department, Government of Andhra Pradesh,

Secretariat, Hyderabad.
2 The District Cooperative Officer, Vizianagaram, Vizianagaram District.
3 The Deputy Registrar of Cooperative Societies, Parvathapuram, Vizianagaram

District.

4 The Chairman/Person-in-Charge, Santhosapuram Primary Agricultural Cooperative Society, Santhosapuram Post, Vizianagaram District.

5 Two CCs to GP For Cooperation, High Court Buildings, Hyderabad (OUT).

6 Two CD Copies.